

HCS HB 427 -- TRUST INSTRUMENTS

SPONSOR: Cornejo

COMMITTEE ACTION: Voted "Do Pass" by the Standing Committee on Judiciary by a vote of 11 to 0. Voted "Do Pass" by the Committee on Rules- Legislative Oversight by a vote of 11 to 0.

Currently, there are certain circumstances under which a no-contest clause, in a trust instrument is unenforceable against an interested person. This bill adds the following circumstances:

(1) Filing a motion, pleading, or other claim for relief concerning breach of trust by a trustee; and

(2) Filing a motion, pleading, or other claim for relief concerning removal of a trustee; and

PROPONENTS: Supporters say that no-contest clauses were not put into place to protect trustees against their own misconduct, but that is how they are being used. Currently, 34 states hold that a beneficiary does not waive his or her right to benefits if the beneficiary brings a misconduct case against a trustee. A trustee will not inform the court when the trustee is breaching the trustee's fiduciary duty, so the only party that could do so is the beneficiary. The beneficiary should not waive his or her rights for attempting to remove a trustee.

Testifying for the bill were Representative Cornejo and Michael Blanton.

OPPONENTS: There was no opposition voiced to the committee.